Honorable Judge Benjamin H. Settle

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

BRADLEY BOARDMAN, a Washington Individual Provider; DEBORAH THURBER, a Washington Family Childcare Provider; SHANNON BENN, a Washington Family Childcare Provider; and FREEDOM FOUNDATION, a Washington nonprofit organization, Plaintiffs, v. GOVERNOR JAY INSLEE, Governor of the State of Washington; PATRICIA LASHWAY, Director of the Washington Department of Social and Health Services ("DSHS"); and ROSS HUNTER, Director of the Washington Department of Early Learning ("DEL"), Defendants, and CAMPAIGN TO PREVENT FRAUD AND PROTECT SENIORS, Intervenor-Defendant.	Case No. 3:17-cv-05255-BHS JOINT STATUS REPORT AND DISCOVERY PLAN

MILLER NASH GRAHAM & DUNN LLP
ATTORNEYS AT LAW
T: 206.624.8300 | F: 206.340.9599
PIER 70
2801 ALASKAN WAY, SUITE 300
SEATTLE, WASHINGTON 98121

Pursuant to FRCP 26(f) and Local Civil Rule 26(f), the parties submit the following Joint Status Report and Discovery Plan.

1. Nature and Complexity

Plaintiffs assert claims that Part III (§§ 7-12) of Initiative 1501, passed in November 2016 and subsequently codified at RCW 42.56.640, RCW 42.56.645, and RCW 43.17.410, violates the U.S. Constitution in various ways, including plaintiffs' First Amendment, Equal Protection, and Due Process rights. Plaintiffs also seek an award of attorney fees and costs pursuant to 42 U.S.C. §1988. Plaintiffs contend that this is a complex case involving unique constitutional law issues.

Defendants and Intervenor contend that this case involves almost exclusively legal issues and can likely be resolved on summary judgment. Defendants and Intervenor contend that the disclosure or non-disclosure of government documents does not implicate First Amendment Freedom of Speech or Association rights, and that Plaintiffs' claims of animus by the supporters of Initiative 1501 do not affect the analysis of the effect of Initiative 1501 because if animus is relevant at all, it can only be the animus of the decision makers – in this case, the voters of Washington state. Defendants and Intervenor also contend that Plaintiffs' Equal Protection claims fail because Plaintiffs are not similarly situated to those who have access to the records that Plaintiffs are denied. Defendants and Intervenor also contend that this case does not present unique constitutional issues and can be resolved by established precedent.

2. Deadline for Joining Additional Parties

The parties do not anticipate additional parties being joined, but propose that the deadline be August 30, 2017.

3. Assignment of Case to Magistrate Judge

The parties do not agree to assignment to a Magistrate Judge.

MILLER NASH GRAHAM & DUNN LLP
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SEATTLE, WASHINGTON 98121

4. Discovery Plan, FRCP 26(f)(3)

(a) Initial disclosures: The parties exchanged initial disclosures on August 8, 2017.

(b) Subjects, timing, and potential phasing of discovery

The parties do not currently anticipate asking the Court for any special orders or relief with respect to discovery, but reserve the right to do so as necessary.

(c) Electronically stored information

Plaintiffs believe that this case will involve significant amounts of Electronically Stored Information ("ESI"). Defendants and Intervenor disagree given the nature of the claims. If necessary, the parties will adopt the Model Agreement Regarding Discovery of ESI, appropriately modified for this case. The parties are currently unaware of any issues regarding disclosure of electronically stored information, except for the following: Intervenor did not renew its internet domain after the November 2016 election was over and months before this lawsuit was filed in April 2017. Intervenor has contacted the internet service provider to inquire if files that were stored on that internet domain are still available and has been told they are not. Plaintiffs may seek an order on spoliation of evidence as Plaintiffs believe that Intervenor should have and did anticipate litigation.

(d) Privilege issues

Issues of attorney/client communications or attorney work product privileges may arise, either with the parties or third-party entities from whom discovery is sought. Third-party entities from whom discovery has been have asserted that constitutionally protected First Amendment rights protect certain information or documents from disclosure, and Intervenor may assert the same. The parties will attempt to resolve these issues cooperatively, but may have to bring such issues before the court. The parties do not currently believe there are any other privileges that may be asserted in this matter.

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(e) Proposed limitation on discovery

The limitations on discovery imposed under the Federal and Local Civil Rules should apply. If the parties determine at a later date that discovery limitations should be adjusted, the parties may stipulate to adjusted limitations or request from this Court appropriate adjustments to those limitations.

(f) Need for discovery-related orders

At this time the parties do not have any proposed discovery-related orders, but Defendants and Intervenor expect that such orders likely will be requested. If it appears during the course of discovery that such orders would be appropriate, the parties will confer and attempt to propose agreed orders.

5. Parties' Views, Proposals, agreements re Local Rule 26(f)(1)

(a) Prompt case resolution

At this time the parties intend to proceed with discovery and litigate this case through dispositive motions or evidentiary hearing. Plaintiffs do not intend at this time to file a motion for a preliminary injunction. As the parties develop the factual record, if a mutually agreeable resolution presents itself, the parties will work cooperatively to discuss it.

(b) Alternative dispute resolution

The parties do not currently believe this matter would be appropriate for an alternative dispute resolution.

(c) Related cases

(i) *Boardman v. Washington State Department of Social and Health Services*, Superior Court of the State of Washington, Thurston County, Case No. 17-2-03294-34: Following oral argument on plaintiffs' motion for a Temporary Restraining Order ("TRO") and this Court's inquiring at oral argument as to whether the exception contained in RCW 42.56.645(1)(g) might apply to allow disclosure of information sought by plaintiffs to some or all of plaintiffs, plaintiff Boardman filed an action in Washington Superior Court,

MILLER NASH GRAHAM & DUNN LLP
ATTORNEYS AT LAW
T: 206.624.8300 | F: 206.340.9599
PIER 70
2801 ALASKAN WAY, SUITE 300
SEATTLE, WASHINGTON 98121

Thurston County, seeking to obtain the information he sought through his Public Records Request to the Department of Social and Health Services and asserting that RCW 42.56.645(1)(g) allowed such disclosure. On Friday, July 14, 2017, Judge Murphy denied Boardman's request and held that RCW 42.56.645(1)(g) did not apply to Boardman or Washington Individual Providers, generally.

(ii) *Petition of Pacific Northwest Child Care Association Before the Public Employment Relations Commission, Case 128937-E-17*: As the Court knows from plaintiffs' Complaint and motion for a Temporary Restraining Order, plaintiffs Debbie Thurber and Shannon Benn, along with other Washington family childcare providers, seek to decertify SEIU Local 925 and replace it with a different representative association, the Pacific Northwest Child Care Association (PNCCA). Doing so requires obtaining signatures from 30% of the bargaining unit members interested in making that change. Plaintiff Thurber asserts in this case that I-1501's revisions to the Public Records Act preclude her or any other family childcare provider from having the information necessary to contact bargaining unit members and secure support for a decertification election. She nevertheless submitted what signatures she was able to gather. On July 14, 2017, PERC denied the petition because it did not include the statutorily mandated 30% showing of interest in changing the collective bargaining representative. PERC declined to comment on the effect of Initiative 1501 when Thurber requested waiver of the 30% rule due to Initiative 1501, determining that it was beyond PERC's authority to waive the 30% rule. Plaintiff Thurber has appealed the decision to the full Commission.

Plaintiffs believe the PERC administrative proceeding is relevant and related because they allege it demonstrates that Initiative 1501's provisions challenged herein effectively preclude Plaintiffs Thurber and Benn and any other Child Care IP from exercising their free speech, associational, and due process rights related to which union will represent them.

MILLER NASH GRAHAM & DUNN LLP
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Defendants and Intervenor contend that the PERC administrative proceeding involves Plaintiff Thurber's rights under collective bargaining laws, and is not relevant or related to the Public Records Act and constitutional issues in this case.

(d) Discovery management

The parties intend to work cooperatively in pursuing and obtaining discovery, including joint efforts to control discovery costs. The parties do not at this time anticipate the need to involve the Court in discovery disputes, but will do so should that change.

(e) Anticipated discovery sought

Plaintiffs have served written discovery requests and expect to take depositions. Plaintiffs also have sought discovery from third-parties. Plaintiffs' discovery pertains to evidence of regarding animus, disparate treatment, and less restrictive means to accomplish stated legislative goals, etc.

The Defendants and Intervenor dispute the relevance of much of the anticipated discovery, and may move for a protective order to limit the scope of discovery.

(f) Phasing motions

The parties agree that discovery should be conducted pursuant to Federal Rules of Civil Procedure, and see no need currently for any protocols regarding the phasing of discovery motions.

(g) Preservation of discoverable information

The parties are aware of their obligations to preserve discovery information. At this time, the parties are not aware of any issues related to the preservation of discoverable information. Intervenor disclosed to the other parties at the Rule 26(f) conference that it did not renew its internet domain after the November 2016 election was over and months before this lawsuit was filed in April 2017. Intervenor has contacted the internet service provider to inquire if files that were stored on that internet domain are still available and has been told

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they are not. Plaintiffs may seek an order on spoliation of evidence as Plaintiffs believe that Intervenor should have and did anticipate litigation.

(h) Privilege issues

Issues of attorney/client communications or, attorney work product, and related common interest privileges may arise, either with the parties or third-party entities from whom discovery is sought. Third-party entities from whom discovery has been sought have asserted that constitutionally protected First Amendment rights protect certain information or documents form disclosure and Intervenor may assert the same. The parties will attempt to resolve these issues cooperatively, but may have to bring such issues before the court. The parties do not currently believe there are any other privileges that may be asserted in this matter.

(i) Model Protocol for Discovery of ESI

Plaintiffs believe that this case will involve significant amounts of Electronically Stored Information ("ESI"). Defendants and Intervenor disagree given the nature of the claims. If necessary, the parties will adopt the Model Agreement Regarding Discovery of ESI, appropriately modified for this case. The parties are currently unaware of any issues regarding disclosure of electronically stored information.

(j) Alternatives to Model Protocol

Plaintiffs believe that this case will involve significant amounts of Electronically Stored Information ("ESI"). Defendants and Intervenor disagree given the nature of the claims. If necessary, the parties will adopt the Model Agreement Regarding Discovery of ESI, appropriately modified for this case. The parties are currently unaware of any issues regarding disclosure of electronically stored information.

6. Date Discovery can be completed

The parties believe that discovery can be concluded by January 19, 2018.

7. Bifurcation

The parties do not believe that this matter should be bifurcated.

MILLER NASH GRAHAM & DUNN LLP
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8. Pretrial Statements

The parties do not believe that Pretrial Statements should be dispensed with in this matter.

9. Other Suggestions for Shortening or Simplifying Case

All parties anticipate bringing dispositive motions following the close of discovery, on all or some of their claims which may shorten or simplify the matter for hearing.

10. Date Case Ready for Trial

The parties believe this case can be ready for trial / evidentiary hearing by August 2018.

11. Jury or Non-Jury:

This matter is a non-jury trial.

12. Number of Days Required for Trial

Plaintiffs believe that this matter will take 10 or more court days for trial.

Defendants and Intervenor believe this matter will take 3-10 court days for trial, depending on this Court's pretrial rulings.

13. Trial Counsel

Peter B Gonick
Callie A. Castillo
ATTORNEY GENERAL'S OFFICE 7141 CLEANWATER DR SW
PO BOX 40100
OLYMPIA WA 98504
Telephone: (360) 753-6245
Fax: (360) 664-2963
peterg@atg.wa.gov
calliec@atg.wa.gov

Attorneys for State Defendants

Gregory J. Wong
Paul J. Lawrence
Claire E. McNamara
PACIFICA LAW GROUP LLP
1191 2ND AVE STE 2000
SEATTLE WA 98101
Telephone: 206.245.1700
Fax: 206.245.1750
greg.wong@pacificalawgroup.com
paul.lawrence@pacificalawgroup.com
claire.mcnamara@pacificalawgroup.com

Attorneys for Intervenor Defendant Campaign to Prevent Fraud and Protect Seniors

David M.S. Dewhirst
Stephanie D. Olson
Freedom Foundation
P.O. Box 552
Olympia, WA 98507
Telephone: (360) 956-3482
Fax: (360) 352-1874
Email:DDewhirst@freedomfoundation.com
solson@freedomfoundation.com

Attorneys for Plaintiffs

Susan K. Stahlfeld
Tara M. O'Hanlon
MILLER NASH GRAHAM & DUNN LLP
Pier 70
2801 Alaskan Way, Suite 300
Seattle, Washington 98121
Telephone: (206) 624-8300
Fax: (206) 340-9599
Email: susan.stahlfeld@millernash.com
tara.ohanlon@millernash.com

Attorneys for Plaintiffs

14. Dates on which Trial Counsel may have Complications to be Considered in Setting Trial Date:

Counsel does not currently have any conflicts in August 2018 or thereafter to be considered in setting the trial date.

15. Service of all Defendants

All defendants have been served.

16. Scheduling Conference

The parties do not believe a scheduling conference with the Court before entry of this order is needed.

17. Corporate Disclosure Statement

Plaintiff Freedom Foundation filed its corporate disclosure statement on April 5, 2017. Intervenor filed its corporate disclosure statement on April 10, 2017.

DATED this 14th day of August, 2017.

/s/ Peter B Gonick
/s/ Callie A. Castillo

Peter B Gonick, WSB No. 25616
Callie A. Castillo, WSB No. 38214
ATTORNEY GENERAL'S OFFICE 7141 CLEANWATER DR SW
PO BOX 40100
OLYMPIA WA 98504
Telephone: (360) 753-6245
Fax: (360) 664-2963
Email: peterg@atg.wa.gov
calliec@atg.wa.gov

Attorneys for State Defendants

/s/ Susan K. Stahlfeld
/s/ Tara M. O'Hanlon

Susan K. Stahlfeld, WSB No. 22003
Tara M. O'Hanlon, WSB No. 45517
MILLER NASH GRAHAM & DUNN LLP
Pier 70
2801 Alaskan Way, Suite 300
Seattle, Washington 98121
Telephone: (206) 624-8300
Fax: (206) 340-9599
Email: susan.stahlfeld@millernash.com
tara.ohanlon@millernash.com

Attorneys for Plaintiffs

/s/ Gregory J. Wong
/s/ Paul J. Lawrence
/s/ Claire E. McNamara

Gregory J. Wong, WSB No. 39329
Paul J. Lawrence, WSB No. 13557
Claire E. McNamara, WSB No. 50097
PACIFICA LAW GROUP LLP
1191 2ND AVE STE 2000
SEATTLE WA 98101
Telephone: 206.245.17111700
Fax: 206.245.1750
Email: greg.wong@pacificalawgroup.com
paul.lawrence@pacificalawgroup.com
claire.mcnamara@pacificalawgroup.com

Attorneys for Intervenor Defendant Campaign to Prevent Fraud and Protect Seniors

/s/ David M.S. Dewhirst
/s/ Stephanie D. Olson

David M.S. Dewhirst, WSB No. 48229
Stephanie D. Olson, WSB No. 50100
Freedom Foundation
P.O. Box 552
Olympia, WA 98507
Telephone: (360) 956-3482
Fax: (360) 352-1874
Email: DDewhirst@freedomfoundation.com
solson@freedomfoundation.com

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on August 14, 2017, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Peter B Gonick
Callie A. Castillo
ATTORNEY GENERAL'S OFFICE
7141 CLEANWATER DR SW
PO BOX 40100
OLYMPIA WA 98504
peterg@atg.wa.gov
calliec@atg.wa.gov

Attorneys for State Defendants

Gregory J. Wong
Paul J. Lawrence
Claire E. McNamara
PACIFICA LAW GROUP LLP
1191 2ND AVE STE 2000
SEATTLE WA 98101
greg.wong@pacificalawgroup.com
paul.lawrence@pacificalawgroup.com
claire.mcnamara@pacificalawgroup.com

Attorneys for Intervenor Defendant Campaign to Prevent Fraud and Protect Seniors

David M. S. Dewhirst
Stephanie Olson
FREEDOM FOUNDATION
PO BOX 552
OLYMPIA WA 98507
ddewhirst@freedomfoundation.com
solson@freedomfoundation.com

Attorneys for Plaintiffs

Under the laws of the United States of America and the state of Washington, the undersigned hereby declares, under the penalty of perjury, that the foregoing statements are true and correct to the best of my knowledge.

Signed at Seattle, Washington, this 14th day of August, 2017.

/s/ Kristin Martinez Clark
Kristin Martinez Clark, Legal Assistant
kristin.martinezclark@millernash.com

MILLER NASH GRAHAM & DUNN LLP
ATTORNEYS AT LAW
T: 206.624.8300 | F: 206.340.9599
PIER 70
2801 ALASKAN WAY, SUITE 300
SEATTLE, WASHINGTON 98121